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COMMONWEALTH *v.* VIRGINIA BANK & TRUST CO.

Jan. 13, 1910. Rehearing Denied.

[66 S. E. 853.]

1. Taxation (§ 386*)—Bank Stock—Deduction for Real Estate—“Value.”—Acts 1902-04, p. 163, c. 148, § 17 (Code 1904, p. 2199), relative to taxation of bank stock provides that from the total market value of its shares of stock there shall be deducted the assessed value of its real estate otherwise taxed in the state and the value of each share of stock shall be its proportion of the remainder, provided that the market value of said stock shall be estimated at a sum not less than the aggregate of the capital, surplus, and undivided profits of the bank, as shown by its last published statement, after deducting from such aggregate the value of its real estate otherwise taxed in the state. Acts 1908, p. 325, c. 213, § 1, amending the previous act, provides that from the total value of the shares of stock of the bank, to be ascertained by adding its capital, surplus, and undivided profits, there shall be deducted “the value” of its real estate otherwise taxed in the state, and the actual value of such share of stock shall be its proportion of the remainder. Held, that the value of real estate to be deducted is its assessed value, and not its actual value; the words “otherwise taxed” not referring merely to real estate, but referring to and modifying the entire phrase, “the value of its real estate otherwise taxed in this state.”

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 637-647; Dec. Dig. § 386.* 2 Va.-W. Va. Enc. Dig. 310; 13 id. 105.]

For other definitions, see Words and Phrases, vol. 8, pp. 7275-7280, 7286.]

2. Taxation (§ 365*)—Bank Stock—Statutes—Constitutionality.—To treat Acts 1908, p. 325, c. 213, § 1, amending Acts 1902-04, p. 163 c. 148, § 17 (Code 1904, p. 2199), relative to taxation of bank stock, as providing that from the value of the bank stock there shall be deducted the actual, rather than the assessed, value of its real estate otherwise taxed in the estate, would render it of doubtful constitutionality, under Const. 1902, § 182 (Code 1904, p. cclxvi), providing that till otherwise provided by law bank stock shall be taxed in the manner provided by the law in force January 1, 1902; but from the total assessed value of the stock shall be deducted the assessed value of its real estate otherwise taxed in the state.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 608-611; Dec. Dig. § 365.* 2 Va.-W. Va. Enc. Dig. 310; 14 id. 145.]

Error from Corporation Court of Norfolk.

Proceeding by the Virginia Bank & Trust Company against

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

the Commonwealth. Judgment for petitioner, and the Commonwealth brings error. Reversed.

The Attorney General, for the Commonwealth.
Loyall, Taylor & White, for defendant in error.

ATLANTIC COAST LINE R. CO. *v.* CAPLE'S ADM'X.

Jan. 13, 1910.

[66 S. E. 855.]

1. Master and Servant (§ 291*)—Injuries—Actions—Instructions—Misleading Instructions.—The modification of a requested instruction in a servant's injury action by inserting the quoted words that, if decedent was injured as a mere accident, "not caused in any manner by defendant's fault or negligence," the jury must find for defendant, though they may believe that decedent was also free from fault, was calculated to confuse and mislead the jury, and the instruction should have been given without such modification.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1146; Dec. Dig. § 291.* 9 Va.-W. Va. Enc. Dig. 721, 722; 7 id. 727.]

2. Master and Servant (§ 291*)—Instructions—Necessity.—Where the employer's theory in a servant's death action, that the injuries were caused by an accident, was supported by sufficient testimony, a proper instruction should have been submitted on that theory.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 1136; Dec. Dig. § 291* 7 Va.-W. Va. Enc. Dig. 707.]

3. Master and Servant (§ 291*)—Injuries—Actions—Instructions—Conformity to Pleading.—In an action against a railroad company for a switchman's death, defendant requested an instruction that, notwithstanding certain acts of negligence alleged by plaintiff, if the jury further believe that decedent's death was caused by his missing his hold "by his own fault or misfortune, and not because of defendant's fault or negligence," while ascending the car ladder, thereby falling in front of the car, and that ascending such ladders was a part of his duty, and he had sufficient experience to know how to perform it, the jury must find for defendant, and another instruction requested by defendant was that if the jury believed it as probable that the accident happened by decedent falling from the car, as that he was jerked from the engine as alleged, they should find for defendant. The theory of the declaration was that decedent was on the back of the engine when injured, drawing the coupling pin, and that the engineer negligently, without signal, suddenly increased speed and jerked decedent upon the track in front of the cars following the engine. Held, that the modification of the first instruction by inserting the quoted words permitted the jury to find for plaintiff whether the negligence causing the injury was alleged in the declaration or

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